THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JERRY M. ALCONE, KIRK A. LOHNES and JAMES W. JETER

Appeal No. 96-2143
Application 08/046,056[1]

ON BRIEF

Before COHEN, FRANKFORT and CRAWFORD, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 2, 9, 10, and 15 through 19. Subsequent to the final rejection, amendments (Paper Nos. 10 and 16) were entered by the examiner amending claims 1 and 9, and canceling claims 2,

[1]Application for patent filed April 12, 1993.

10, and 17

through 19. On page 2 of the answer (Paper No. 14), now superseded by the supplemental examiner's answer of July 29, 1996, the examiner indicated that claim 1 was now considered to be allowable.[2] Non-elected claims 3 through 8, 11 through 14, and 20 through 22, the only other claims remaining in the application stand withdrawn from consideration by the examiner. In light of the above, we have before us for review on appeal only claims 9, 15, and 16.

Appellants' disclosed invention pertains to a low force actuator system. An understanding of the invention can be derived from a reading of exemplary claims 9 and 15, copies of which appear in the main brief (Paper No. 13).

As evidence of obviousness, the examiner has applied the documents listed below:

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[2]On the last two pages of the supplemental examiner's answer of July 29, 1996, the examiner offers an explanation as to why the content of claim 1, previously under final rejection based upon the combined teachings of Froeschle and Ivers (35 U.S.C. § 103), is now considered allowable. However, in light of our assessment of the low force actuator system of claim 9 relative to the combined teachings of Froeschle and Ivers, infra, it appears appropriate to us for the examiner to again consider the low force actuator system of claim 1 relative to this prior art and take appropriate action.

Ivers et al. (Ivers)	4,887,699	Dec. 19, 1989
Froeschle et al. (Froeschle)	4,981,309	Jan. 01, 1991

The following rejection is the sole rejection before us for review.

Claims 9, 15, and 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Froeschle in view of Ivers.

The full text of the examiner's rejection and response to the argument presented by appellants appears in the supplemental examiner’s answer of July 29 1996., while the complete statement of appellants’ argument can be found in the main and reply briefs (Paper Nos. 13 and 16).[3]

OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered

[3]An appeal brief supplement (Paper No. 19) was submitted in response to an order for compliance (Paper No. 18).

appel-lants' specification and claims, the applied patents,[4] and the respective viewpoints of appellants and the examiner. As a con-
sequence of our review, we make the determination which follows.

We affirm the examiner's rejection of claims 9, 15, and 16.

In applying the test for obviousness,[5] we reach the conclusion that the low force actuator system of claim 9, and the low force actuator of claims 15 and 16, would have been obvious to one having ordinary skill in the art on the basis of the combined teachings of Froeschle and Ivers. More specifically, it is our opinion that one of ordinary skill in

[4]In our evaluation of the applied patents, we have considered all of the disclosure thereof for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

[5]The test for obviousness is what the combined teachings of references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

the art would have been motivated to utilize an accelerometer with the Froeschle actuator since an accelerometer was, at the time of the present invention, a control alternative in the art, as exemplified by the Ivers' disclosure.

This panel of the board is not in accord with appellant's view that combining Froeschle with Ivers might yield at least an accelerometer controlled actuator system " but not a low force, high frequency opposed system" (main brief, page 8).

The patent to Froeschle clearly teaches a linear electric motor 32 as a controllable force source such that "[a]ny varia-tion in force that is desired may be effected by correspondingly varying the control signal" (column 3, lines 8 through 11). Further, Froeschle expressly points out that control is at "all meaningful frequencies" (column 1, lines 53 through 55).

Considering the noted teaching of Froeschle, in particular, it is apparent to us that one having ordinary skill in the art would have readily understood the modified Froeschle system as encompassing an actuator or means capable of opposing or sized to counter relatively small high frequency forces, as now set forth in claims 1 and 9. Thus, appellants' argument alone simply does not persuade us that the evidence of obviousness is deficient regarding the content of claims 1 and 9. As to the argument addressed to claim 16 regarding a proof mass (main brief, page 8), we disagree with appellants view that Froeschle, in partic-ular, would not have been suggestive thereof. As we see it, the permanent magnets of Froeschle (column 3, line 21) would clearly have been suggestive of the broadly recited "proof mass" of claim 16.[6]

In summary, this panel of the board has affirmed the rejection of claims 9, 15, and 16 under 35 U.S.C. §103.

[6]We note appellant's indication in the specification (page 4, lines 28, 29) that the proof mass can be a separate mass, but is typically one or more magnets of the actuator 21 (electromagnetic actuator).

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
CHARLES E. FRANKFORT Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
MURRIEL E. CRAWFORD Administrative Patent Judge	)	

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